

CHARLES R. GORTON,)	CV F- 05-0354 REC DLB P
)	
Plaintiff,)	
)	ORDER DENYING MOTION FOR
v.)	DISCOVERY
)	[DOC 27]
OFFICER BICK, et. al.,)	
)	
)	
Defendants.)	
)	

The discovery phase of this litigation was opened January 23, 2008. Discovery is self-executing until such time as a party becomes dissatisfied with a response and seeks relief from the court pursuant to the Federal Rules of Civil Procedure. Interrogatories, requests for admissions, requests for production of documents, and responses thereto shall not be filed with the court until there is a proceeding in which the document or proof of service is at issue. Such documents are to be served on the opposing party, and not with the court. Local Rule 33-250, 36-250. It does not appear that plaintiff has served written discovery on the defendants requesting the documents identified in

1 his motion.

2 Plaintiff is entitled to seek documentary evidence from third parties via the issuance of a
3 subpoena duces tecum under Federal Rule of Civil Procedure 45, which would be served by the
4 United States Marshal given that plaintiff is proceeding in forma pauperis. Plaintiff must describe
5 the documents he is seeking, which plaintiff has done, and plaintiff must specify from whom he is
6 seeking the documents. Directing the Marshal's Office to expend its resources personally serving a
7 subpoena is not taken lightly by the court. In this instance, the court has concerns that plaintiff has
8 not yet sought the documents from defendants. Many of the identified documents are in the
9 possession, custody or control of defendants and therefore may be obtained by plaintiff through
10 discovery. In addition, many of the documents identified are likely in plaintiff's medical file and/or
11 "C" file, which plaintiff may review upon request. If the documents are not in his "C" file or
12 medical file, it is not clear to the court where they would be and the court will not send the Marshal
13 on a fishing expedition. Plaintiff's motion is denied, without prejudice to renewal accompanied by
14 an offer of proof concerning plaintiff's efforts to obtain the documents, the existence of the
15 documents and the location of the documents.

16 Accordingly, for the foregoing reasons, plaintiff's motion for subpoenas is DENIED.

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19 IT IS SO ORDERED.

20 Dated: March 7, 2008

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE